

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 585-1800

Appeal Filed: 10/06/05  
 49<sup>th</sup> Day: 11/24/05  
 Substantial Issue Found: 11/16/05  
 Staff: Ford  
 Staff Report: 4/21/06  
 Hearing Date: 5/11/06



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**STAFF REPORT: APPEAL**  
**DE NOVO REVIEW**

**APPEAL NO.:** A-4-MAL-05-164

**APPLICANT:** Lechuza Villas West LLC

**APPELLANTS:** Commissioners Caldwell and Kruer; Protection of Coastal Habitat;  
 Patt Healy and Malibu Coalition for Slow Growth

**LOCAL GOVERNMENT/ LOCAL DECISION:** City of Malibu, Approval with Conditions

**PROJECT LOCATION:** 33616 Pacific Coast Highway, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a two-story, 5,388 sq. ft., single-family residence with a 2,398 sq. ft. basement, attached two-car garage, driveway, swimming pool, spa, gazebo, infinity reflecting pool, alternative onsite wastewater treatment system, hardscape and landscape improvements, and 989 cu. yds. of grading (847 cu. yds. cut and 142 cu. yds. fill). The proposed project also includes recordation of an open space conservation easement on a 52.25 foot wide ocean front lot located at 19570 Pacific Coast Highway in the City of Malibu.

**SUBSTANTIVE FILE DOCUMENTS:** Staff Report for City of Malibu Coastal Development Permit No. 05-041 and Appeal No. 05-005; City of Malibu Planning Commission Resolution No. 05-30; Geotechnical Investigation Report, Stratum Geotechnical Consultants, Inc., February 4, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., August 15, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., July 19, 2005; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., January 4, 2006; Biological Inventory, 33616 Pacific Coast Highway by Andrew McGinn Forde, Forde Biological Consultants, February 25, 2005.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the proposed project with 13 special conditions regarding geologic and engineering recommendations, erosion control, drainage and polluted runoff, deed restriction, landscape and fuel modification plans, pool and spa drainage and maintenance, assumption of risk, future development, disposal of excess excavated material, on-site wastewater treatment system, structural appearance, no future bluff or shoreline protective device, lighting restriction, revised plans, and deed restriction. As conditioned, the proposed

development will be consistent with all applicable policies and standards of the certified City of Malibu Local Coastal Program (LCP) and the access and recreation policies of the Coastal Act. The Commission previously found that this appeal raised substantial issue with respect to the project's consistency with the applicable bluff development, visual resources, and ESHA policies and standards of the LCP. The standard of review for the de novo review of the project is whether the proposed development is in conformity with the certified City of Malibu Local Coastal Program and the public access policies of the Coastal Act. During the De Novo hearing, testimony may be taken from all interested persons.

## **I. STAFF RECOMMENDATION**

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-4-MAL-05-164 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development on the ground that the development is located between the sea and the first public road nearest the shoreline and will conform with the policies of the certified Local Coastal Program for the City of Malibu and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act since feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

## **II. STANDARD CONDITIONS**

- 1. Notice of Receipt and Acknowledgment.** These permits are not valid and development shall not commence until copies of the permits, signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, are returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permits will expire two years from the date on which the Commission voted on the de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application(s) for extension of the permit(s) must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permits may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permits.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject properties to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. ***Plans Conforming to Geotechnical Engineer's Recommendations***

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geotechnical reports (Geotechnical Investigation Report, Stratum Geotechnical Consultants, Inc., February 4, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., August 15, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., July 19, 2005; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., January 4, 2006). All recommendations shall be incorporated into all final design and construction, including recommendations concerning foundations, grading, and drainage, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### 2. ***Erosion Control, Drainage and Polluted Runoff Control Plans***

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director; a) a ***Local Storm Water Pollution Prevention (SWPPP) Plan*** to control erosion and contain polluted runoff during the construction phase of the project; and b) a ***Stormwater Management Plan (SWMP)*** for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

a) ***Local Storm Water Pollution Prevention Plan (SWPPP)***, for the construction phase of the project shall include at a minimum the following:

- Property limits, prior-to-grading contours, and details of terrain and area drainage
- Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
- Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)

- Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
  - Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
  - Details pertaining to the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
  - Information on potential flow paths where erosion may occur during construction
  - Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
    - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
    - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
    - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
    - Prevent blowing dust from exposed soils.
  - Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
    - Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
    - Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
    - Provide sanitary facilities for construction workers.
    - Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.
- b) **Storm Water Management Plan (SWMP)**, for the management of post construction storm water and polluted runoff shall at a minimum include the following:
- Site design and source control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
  - Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
  - Potential flow paths where erosion may occur after construction
  - Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
  - Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:

- Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100 year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street & gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;
- Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
- Constructing necessary off-site storm drain improvements to satisfy b. above, or;
- Other measures accomplishing the goal of mitigating all offsite/downstream impacts

### **3. Landscaping and Erosion Control Plans**

Prior to issuance of a coastal development permit, the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

#### **A) Landscaping Plan**

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such

planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains. In no case shall lawn or turf be planted within the required 50-foot bluff setback area.
- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

**B) Monitoring**

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

**4. *Pool and Spa Drainage and Maintenance***

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a written pool and spa maintenance plan for any pool, spa, or water feature included in the revised plans submitted pursuant to Special Condition Twelve (12), that contains an agreement to install and use a no chlorine or low chlorine purification system. The plan shall identify methods of spa maintenance that will ensure that any runoff or drainage from the spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a minimum prohibit discharge of chlorinated or non-chlorinated spa water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittees shall undertake development and maintenance in compliance with this spa maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

### ***5. Assumption of Risk, Waiver of Liability and Indemnity***

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion, bluff retreat, earth movement, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

### ***6. Future Development Restriction***

This permit is only for the development described in Coastal Development Permit No. A-4-MAL-05-164. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the entire parcel. Accordingly, any future improvements to the entire property, including but not limited to the single family residence, garage (including conversion of the structure to habitable space), driveway, turnaround, landscaping, hardscape, swimming pool, spa, or other water features, and removal of vegetation or grading other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition Three (3), shall require an amendment to Coastal Development Permit No. A-4-MAL-05-164 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

### ***7. Disposal of Excess Excavated Material***

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal

site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

## **8. On-site Wastewater Treatment System**

Prior to the receipt of the certificate of occupancy for the addition to the residence, the applicant shall submit for the review and approval of the Executive Director verification that they have obtained a valid Standard Operating Permit from the City for the proposed OSTs. This permit shall comply with all of the operation, maintenance and monitoring provisions applicable to OSTs contained in policies 18.4 and 18.9 of the Malibu LIP.

## **9. Structural Appearance**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. A-4-MAL-05-164. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. A-4-MAL-05-164 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **10. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-4-MAL-05-164 including, but not limited to, the residence, garage, foundations, decks, pool, spa, driveway, turnaround, landscaping, and septic system, in the event that the development is threatened with damage or destruction from erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, garage, foundations, decks, pool, spa, driveway, turnaround, landscaping, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above or any

public health risks. The permittee shall commence removal of the threatened development within sixty (60) days following Commission approval of the subject amendment unless the Executive Director authorizes additional time for good cause and shall expeditiously complete such removal. In the event that portions of the development fall on or at the base of the bluff below the project site before they are removed, the landowner shall remove all recoverable debris associated with the development and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit and shall be completed within sixty (60) days of approval of the permit, unless the Executive Director authorizes additional time for good cause.

- B. In the event the edge of the bluff recedes to within ten (10) feet of the foundation elements of the residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed civil engineer with experience in coastal processes and certified engineering geologist retained by the applicant, that addresses whether any portions of the residence are threatened by erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure and shall complete the measures approved in the permit amendment expeditiously.

### **11. Lighting Restriction**

By acceptance of this permit, the applicant acknowledges and agrees that the only exterior, night lighting that is allowed on the site is the following:

- 1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.
- 2) Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- 3) The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

No light source will be directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area and that no lighting around the perimeter of the site, the beach area or for aesthetic purposes shall be allowed.

### **12. Revised Plans**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, revised plans that demonstrate that all structural development, with the exception of any proposed decks, patios, and walkways that do not have structural foundations, are located outside of the bluff setback area, consistent with Section 10.4 D1 of the City of Malibu LIP (50 feet from the edge of the on site bluff). Any proposed decks, patios, and walkways that do not have structural foundations may be located within 50 feet of the bluff edge, but in no case shall extend closer than 15 feet from the bluff edge.

The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **13. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. Project Description**

The applicant proposes to construct a two-story, 5,388 sq. ft. single-family residence with a 2,398 sq. ft. basement, attached two-car garage, driveway, swimming pool, spa, gazebo, infinity reflecting pool, alternative onsite wastewater treatment system, hardscape and landscape improvements, and 989 cu. yds. of grading (847 cu. yds. cut and 142 cu. yds. fill) on a bluff top lot in the western area of the City of Malibu. The proposed project also includes recordation of an open space conservation easement on a 52.25 foot wide ocean front lot located at 19570 Pacific Coast Highway in the City of Malibu (**Exhibits 3 – 12**).

Significant portions of the project are located on or in close proximity to the on site bluff edge. The project includes two permeable wood decks and a shallow infinity reflecting pool that all cantilever over the edge of the bluff. The proposed gazebo is less than five feet from the edge

of the bluff. In addition to the infinity reflecting pool, the project includes a swimming pool located approximately twenty feet from the bluff edge. The central, main area of the residence would be approximately fifty feet from the bluff edge, while there are two wings on either side of the structure that extend closer to the edge (west wing approximately 40 feet from the edge, and east wing approximately 30 feet from the edge). As described above, the project approved by the Planning Commission was appealed to the City Council. While the appeal was denied, an additional condition of approval was added to the project, which requires the applicant to redesign the infinity pool: “so that no portion of the pool extends past the edge of bluff”.

The applicant is proposing two modifications to the project description from what was approved by the City of Malibu. First, the applicant proposes to maintain the originally proposed location of the infinity pool/reflecting pond, which the City required to be redesigned to extend no further than the bluff edge. Second, the applicant proposes to record an open space conservation easement on a 52.25 foot wide ocean front lot located at 19570 Pacific Coast Highway. The intent of the latter proposal is to provide mitigation for elimination of the bluff setback for the proposed site improvements. However, eliminating the development potential of an off-site property would not provide mitigation of the same impacts that would be avoided by implementation of the LCP bluff setback. As discussed in greater detail below, the certified Malibu LCP requires a minimum 50 foot setback from the bluff edge for structural development on bluff top lots, with a reduced minimum 15 foot setback for ancillary structures (such as decks and walkways) that have no structural foundations. The Malibu LCP does not allow mitigation to substitute for adherence to the required setbacks where such setbacks are feasible, as in the subject case. Therefore, while the applicant’s proposal to record an open space conservation easement on the lot at 19570 Pacific Coast Highway would reduce the impacts of developing that parcel, the Commission cannot accept the proposed easement dedication as mitigation for eliminating the required bluff setbacks on the subject project site.

## **B. Background**

### **1. Local Government Action and Filing of Appeal**

On June 20, 2005, the City of Malibu Planning Commission approved Coastal Development Permit 05-041 for the single family residence project. The Coastal Development Permit was approved subject to 15 standard conditions and 16 special conditions. The special conditions include the following: landscaping, color restriction, lighting, geology, water quality (storm runoff), and solid waste recycling. Protection of Coastal Habitat filed a local appeal (Appeal 05-005) of the Planning Commission’s action on June 29, 2005, within the City’s appeal period. The City of Malibu City Council denied Appeal 05-005 on September 26, 2005, upholding the Planning Commission action, but adding a additional condition of approval to the project, which requires the applicant to redesign the infinity pool: “so that no portion of the pool extends past the edge of bluff.”

The Notice of Final Action for the project was received by Commission staff on October 5, 2005. A ten working day appeal period was set and notice provided beginning October 6, 2005, and extending to October 20, 2005. Appeals of the City’s action were filed by Protection of Coastal Habitat (October 6, 2005); Commissioners Caldwell and Kruer (October 13, 2005), and Patt Healy and Malibu Coalition for Slow Growth (October 13, 2005), all during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on

the appeals and requested that the City provide its administrative record for the permit. The administrative record was received on October 14, 2005.

The appeals are attached as **Exhibit 2**. All three appeals contend that the subject site should be considered to contain a coastal bluff, and that the bluff development policies and standards of the certified City of Malibu Local Coastal Program (LCP) should have been applied to the development. In addition, the appeal by Patt Healy and the Malibu Coalition for Slow Growth contends that 1) no analysis was provided as to whether scenic views to and along the ocean will be obstructed by the development; 2) no biological assessment was done and staff report indicates presence of oak trees on the site without a native tree protection plan; 3) the project was not reviewed by the City's Environmental Review Board (ERB), although the bluff on the site is mapped ESHA; and 4) the project must be sent back for review to the City if the applicant wants to donate a lot on Lechuza Beach as part of the project.

The appeal was scheduled for a substantial issue determination at the Commission's November 2005 hearing. On November 16, 2005, the Commission found that Appeal No. A-4-MAL-05-164 presented a substantial issue with respect to the grounds on which the appeals were filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act. The appeal was continued for the de novo review of the project.

## **2. Project Site**

The subject parcel is a vacant approximately 2/3 acre bluff top lot in the western area of the City of Malibu (**Exhibits 1, 13**). The parcel extends from the seaward side of Pacific Coast Highway to the base of an approximately 50 foot high coastal bluff. The proposed project is located in the bluff top area of the site that occupies approximately 20,000 sq. ft of the total area of the property. The bluff top area descends gently to the near vertical bluff face, which begins approximately 165 feet south of the northern property line. The area immediately adjacent to the northern property line and Pacific Coast highway consists of an approximately five to six foot high berm that was the result of the construction of Pacific Coast Highway.

According to a biological survey submitted by the applicant (Biological Inventory, 33616 Pacific Coast Highway by Andrew McGinn Forde, Forde Biological Consultants, February 25, 2005), the bluff top portion of the project site contains ruderal vegetation, and the bluff face contains vegetation associated with the manzanita series of chaparral, including such native plants as chaparral yucca, giant wild rye, laurel sumac, and manzanita. The report states that this community is inundated with non-native species, contains no rare or special status species, and disconnected from any larger habitat area, and is thus not considered to be an environmentally sensitive habitat area (ESHA).

In addition, there are five oak trees on the bluff top area adjacent to the northern property line, which the applicant proposes to transplant in order to accommodate the proposed driveway. Staff visited the site and observed that the trees were not native to the site but were recently planted, with the exception of one tree, which was still in a box and was dead. The four remaining trees are small (approximately 3 inches in diameter approximately 4 ½ feet above grade) and thus do not qualify for protection under the native tree protection policies of the Malibu LCP.

## **C. Hazards / Blufftop Development**

The proposed development is located on a bluff top lot in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and bluff top development that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

In addition, the following LCP policies are applicable in this case:

- 3.119 New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.***
- 4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
- 4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.***
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.***
- 4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.***

- 4.27 *All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.*
- 4.37 *Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*
- 4.38 *No shoreline protective structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush or if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.*
- 4.42 *As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.*

**4.45** *New development shall minimize risks to life and property from fire hazard through:*

- *Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;*
- *Siting and designing development to avoid hazardous locations;*
- *Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;*
- *Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;*
- *Use of fire-retardant, native plant species in landscaping.*

**4.49** *Applications for new development, which require fuel modification, shall include a fuel modification plan for the project, prepared by a landscape architect or resource specialist that incorporates measures to minimize removal of native vegetation and to minimize impacts to ESHA, while providing for fire safety, consistent with the requirements of the applicable fire safety regulations. Such plans shall be reviewed and approved by the Forestry Division.*

**6.29** *Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*

- *Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
- *Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
- *Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
- *Lawn shall not be located on any geologically sensitive area such as coastal blufftop.*
- *Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*

The Malibu LIP contains the following definition of “coastal bluff”:

**COASTAL BLUFF** – *a high bank or bold headland, 10 feet or more in vertical extent, with a broad, precipitous, sometimes rounded cliff face overlooking a body of water.*

Section 10.2 of the Malibu LIP sets forth the types and location of development that the standards of Chapter 10 (Shoreline and Bluff Development) shall be applied to:

**10.2 (A).** *All development requiring a Coastal Development Permit, including but not limited to residential structures, commercial buildings, and shoreline protective devices (seawall, revetment, retaining wall, bulkhead, tieback anchor system, or similar structure) on any parcel of land that is located on or along the shoreline,*

***a coastal bluff or bluff-top fronting the shoreline shall be governed by the policies, standards and provisions of this chapter in addition to any other policies or standards contained elsewhere in the certified LCP which may apply. Where any policy or standard provided in this chapter conflict with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified Local Coastal Plan, and it is not possible for the development to comply with both the LCP and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall take precedence.***

### **Coastal Bluff**

The project site is a vacant approximately 2/3-acre parcel that extends from the seaward side of Pacific Coast Highway to the bluff edge and down the bluff face to the base of an approximately 50 foot high coastal bluff. The proposed project is located in the bluff top area of the site that occupies approximately 20,000 sq. ft of the total area of the property. The bluff is not currently subject to wave action due to the presence of a private road at the base of the bluff and a row of single-family residences on the sandy beach below. However, the bluff is subject to erosion from precipitation falling on the bluff face, sheet flow across the top of the bluff, and from wind.

The primary contention that the Commission previously found to raise substantial issue with regard to this project is that the site contains a "coastal bluff" and is therefore subject to the bluff development policies of the Malibu LCP. Chapter 2 of the LIP states that the definition of "coastal bluff" is: "a high bank or bold headland, 10 feet or more in vertical extent, with a broad, precipitous, sometimes rounded cliff face overlooking a body of water". There is no indication contained in the LCP definition of "coastal bluff" that the presence of development between the project site and the shoreline is determinative of whether the site contains a coastal bluff. In this case, the bluff on the project site is overlooking a body of water, namely the Pacific Ocean. The fact that a row of homes has been built on the sandy beach below, at the base of the bluff, does not change the fact that this bluff overlooks the ocean. The potential of wave erosion endangering blufftop development and necessitating the construction of a shoreline protective device on the beach at the base of bluffs is one of the main reasons that bluff setbacks must be adequate to protect structures throughout the life of such structures. However, that is not the only issue. Bluffs are erosional features that can be subject not only to wave erosion, but also erosion from ground water and direct precipitation on the bluff face. Bluffs that are not exposed to wave attack at the base are still subject to erosion and failure, which can trigger the need for upper bluff shoreline protective devices to protect a home that is too close to the bluff edge. As such, the bluff development policies and provisions of the LCP require setbacks from the bluff edge both to prevent the future need for shoreline protective devices, as well as to assure stability and structural integrity of new development for the anticipated life of the structures.

It is clear that the project site contains a geomorphological feature that is a coastal bluff, even though this landform has apparently been altered in the past. Based on historical photos submitted by the applicant, it appears that the bluff was cut back during construction of the private road and residential building pads that are located below the bluff as it exists today. However, the Commission Geologist, Mark Johnsson, has reviewed photos and other information concerning the project site and confirms that the project site should be considered to contain a coastal bluff. In addition, the bluff meets the definition of a coastal bluff provided in the Malibu LIP and cited above. As such, the Commission finds that the bluff development policies and provisions of the Malibu LCP **are** applicable to the subject project.

## **Bluff Setback**

Significant portions of the proposed development, including a swimming pool, infinity reflecting pool, gazebo, decks, and part of two wings of the single family residence, are located on or within 50 feet of the bluff edge. Additionally, the applicant proposes to cantilever the infinity reflecting pool and two wooden decks approximately 10-15 feet beyond the edge of the bluff.

LCP Policy 4.27 requires a 100 ft. setback from the bluff edge unless the geologist recommends a lesser setback with the assurance of a safety factor of 1.5 over an economic life of the structure for 100 years, in which case the required setback may be reduced to 50 feet. Section 10.4 D of the Malibu LIP requires that new development on bluffs must provide a minimum setback of 100 feet. This setback may be reduced to no less than 50 feet if one of two conditions can be met with a bluff setback that is less than 100 feet. The two cases are as follows:

### **1. Factor of Safety less than 1.5**

Section 10.4 D1 provides for the condition where the bluff exhibits a factor of safety less than 1.5 for either gross or surficial landsliding. In that case, the location on the bluff top at which a 1.5 factor of safety exists must be determined. The required bluff setback would be the 1.5 factor of safety line plus the distance that the bluff might be expected to erode over 100 years (based on the bluff retreat rate).

### **2. Factor of Safety Greater than 1.5**

Section 10.4 D2 provides for a different condition where the bluff exhibits a gross and surficial factor of safety greater than 1.5. In this case, the bluff setback would be the distance that the bluff might be expected to erode over 100 years (based on the bluff retreat rate) plus ten feet.

Section 10.4 D states the requirements for the consulting engineering geologist, geotechnical engineer, or civil engineer with experience in soil engineering to conduct the required slope stability analysis. Basically, the analysis must show, through cross sections modeling worst case geologic and slope gradient conditions, postulated failure surfaces. The overall stability of the slope and the stability of the surficial units is examined. A factor of safety is determined for each potential failure surface. For the purposes of Section 10.4 D, if any of the postulated failure surfaces has a factor or safety of less than 1.5, then the bluff setback provided in Section 10.4 D1 must be applied. This requirement is designed to assure that after 100 years of erosion the building area will still have a factor of safety of 1.5. If, on the other hand, all of the failure surfaces exhibit factors of safety over 1.5, then the bluff setback found in LIP Section 10.4 D2 would be applied. In either case, the bluff setback cannot be less than 50 feet, although a greater setback may be necessary to meet the applicable standard.

In this case, the consulting geologist has determined that there are potential failure surfaces that have a factor of safety less than 1.5. They also determined that the location on the site at which a factor of safety of 1.5 exists is approximately 116 feet seaward of the property line at Pacific Coast Highway (although the 1.5 factor of safety line was not shown on a map view of the site). As such, the Commission finds that the bluff slope exhibits a factor of safety of less than 1.5, and that the appropriate bluff setback should be determined consistent with LIP

Section 10.4 D1. In that case, the appropriate bluff setback would be measured from the location of the 1.5 factor of safety line, plus the distance the bluff is expected to erode over 100 years, based on the bluff retreat rate.

The applicant's geotechnical consultants provided an estimate of the bluff erosion rate that affects the project site of "less than 1/2 inch" per year. Based on this estimate, the distance that the bluff might be expected to erode over 100 years is approximately four feet. Therefore, the bluff setback required by LIP Section 10.4 D1 is four feet landward of the 1.5 factor of safety line or 38 to 50 feet from the edge of the bluff. As noted above, the LIP Section 10.4 D1 requires a minimum setback of 50 feet; therefore in this case a minimum 50 foot setback is appropriate.

The proposed project does not conform to this required bluff setback as significant portions of the proposed project are located within the 50 foot bluff setback area. The project includes two permeable wood decks and a shallow infinity reflecting pool that all cantilever over the edge of the bluff. The proposed gazebo is less than five feet from the edge of the bluff. In addition to the infinity reflecting pool, the project includes a swimming pool located approximately twenty feet from the bluff edge. The central, main area of the residence would be approximately fifty feet from the bluff edge, while there are two wings on either side of the structure that extend closer to the edge (west wing approximately 40 feet from the edge, and east wing approximately 30 feet from the edge).

The applicant proposes to record an open space conservation easement on a 52.25 foot wide ocean front lot located at 19570 Pacific Coast Highway (Las Tunas Beach area). The intent of this proposal is to provide mitigation for the elimination of the bluff setback for the subject site improvements. However, eliminating the development potential of an off-site property would not provide mitigation of the same impacts that would be avoided by implementation of the LCP bluff setback. For instance, the proposed mitigation would not affect the slope stability of the subject site, and the associated potential hazards that cannot be addressed by mitigation. The proposed mitigation thus fails to render the proposed project consistent with Section 30253 of the Coastal Act or with the applicable LCP Policies. Further, the Malibu LCP does not allow mitigation to substitute for adherence to the required setbacks where such setbacks are feasible, as in the subject case. Section 10.4 D of the Malibu LIP contains no provisions allowing mitigation to substitute for application of minimum setbacks. Therefore, while the applicant's proposal to record an open space conservation easement on the lot at 19570 Pacific Coast Highway would reduce the impacts that may result from developing that parcel, the Commission cannot accept the proposed easement dedication as mitigation for eliminating the required bluff setbacks on the subject project site.

Rather, the Commission finds that it is necessary to require the applicant to revise the project such that all development conforms to the bluff setback required pursuant to LIP Section 10.4 D1. Therefore, **Special Condition Twelve (12)** requires the applicant to submit revised plans, for the review and approval of the Executive Director, that eliminate all structural development, with the exception of any proposed decks, patios, and walkways that do not have structural foundations, within 50 feet of the edge of the on site bluff. Any proposed decks, patios, and walkways that do not have structural foundations may be located within 50 feet of the bluff edge, but in no case shall extend closer than 15 feet from the bluff edge.

Additionally, Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, requires that new development assure stability and to not require construction of protective devices that would substantially alter natural landforms along bluffs. LCP Policy 4.37 states that

no future shoreline or bluff protective structure shall be permitted to protect new development. In addition, LCP Policy 4.38 requires that all ancillary or accessory structures be removed if the bluff edge encroaches to within 10 ft. of the structure.

The applicant is not proposing any bluff protective structures as part of the project. Further, the applicant's geologic consultants state that the project will not require any such structures during the life of the project. To further ensure that no protective structures are ever built on the property, consistent with LCP Policy 4.37 and Section 30253 of the Coastal Act, **Special Condition Ten (10)** requires the applicant to agree, by acceptance of the permit, that no bluff or shoreline protective device(s) will ever be constructed to protect the development approved pursuant to this permit application. **Special Condition Thirteen (13)** requires the applicant to record a deed restriction imposing **Special Condition Ten (10)** and all other standard and special conditions as covenants, conditions and restrictions on the use and enjoyment of the property. In addition, **Special Condition Ten (10)** also requires removal of all or a portion of the structure if any government agency orders the residence to be vacated due to geologic or other natural hazards, or in the event that the bluff recedes to within ten (10) feet of the principal residence and a geotechnical report recommends removal of all or part of the residence to remedy hazards or vacation of the residence as unsafe for occupancy, consistent with LCP Policy 4.38.

Further, the Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. As described above, the project will provide a bluff setback adequate to ensure that the development will not be damaged by bluff erosion during the life of the project. The Geotechnical Investigation Report by Stratum Geotechnical Consultants, Inc. dated February 4, 2003 states:

***It is the finding of this firm that the proposed project will be safe from geotechnical hazards (i.e. landslide, settlement or slippage) and will not adversely affect adjacent properties, in compliance with Section 111 of the City of Malibu Building Code, provided our recommendations are incorporated into the design and properly implemented during construction.***

As such, the Commission notes that the proposed project will serve to ensure general geologic and structural integrity on site. However, the Commission also notes that the submitted geotechnical reports (Geotechnical Investigation Report, Stratum Geotechnical Consultants, Inc., February 4, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., August 15, 2003; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., July 19, 2005; Supplemental Geotechnical Letter, Stratum Geotechnical Consultants, Inc., January 4, 2006) include a number of recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, **Special Condition One (1)** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the consulting geologist and geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the

Commission relative to construction, foundations, grading, and drainage. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

The Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that the proposed development is located on a bluff top parcel. The Commission further notes that because there remains some inherent risk in building on sites adjacent to a coastal bluff, such as the subject site, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Five (5)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards that exist on the site and that may adversely affect the stability or safety of the proposed development. **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission also finds that the minimization of site erosion will add to the stability of the site. In addition, the Malibu LCP requires that graded and disturbed areas be revegetated to minimize erosion. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants compatible with the surrounding environment. Invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foilage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission finds that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize bluff slopes and bluff top areas and that instead such vegetation adversely affects the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foilage weight, which helps to stabilize the soils, but also by their low irrigation and maintenance requirements. Malibu LCP policy 3.119 requires that landscaping for erosion control purposes consist entirely of native or drought-tolerant non-invasive plants. Within the Zone A, as designated on the fuel modification plan, non-invasive ornamental plants are acceptable. Typically, Zone A is a 20 foot irrigated zone immediately surrounding the structure. Therefore, in order to ensure the stability and geotechnical safety of the site, **Special Condition Three (3)** requires that all proposed disturbed and graded areas on subject site are stabilized with native and limited non-invasive ornamental vegetation.

The project will increase the amount of impervious coverage on-site, which may increase both the quantity and velocity of stormwater runoff. If not controlled and conveyed off-site in a non-erosive manner, this runoff will result in increased erosion, adversely affect site stability, and degrade downslope water quality. The applicant's geologic / geotechnical consultant has recommended that site drainage be collected and distributed in a non-erosive manner. In addition, the Malibu LCP Policy 4.10 requires that "new development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams". Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by **Special Condition**

**Two (2)**, to submit drainage and polluted runoff management plans for the construction and post-construction phases of development that are prepared by the consulting engineer.

Furthermore, to ensure that excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at an appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition Seven (7)**.

Lastly, in order to ensure that no additions or improvements are made to the property without due consideration of potential hazards, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal permit if additions or improvements to the site are proposed in the future, as detailed in **Special Condition Six (6)**.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 4 (Hazards and Shoreline/Bluff Development) of the Malibu LUP, including Section 30253 of the Coastal Act, which is incorporated as part of the LUP, and applicable standards of Chapter 9 (Hazards) and Chapter 10 (Shoreline and Bluff Development) of the Malibu LIP.

## **D. Visual Resources**

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act, which is incorporated as part of the Malibu LCP, states that:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.***

In addition, the following LCP policies are applicable in this case:

- 6.1 *The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.*
- 6.2 *Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.*
- 6.3 *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:*
- *Pacific Coast Highway*
  - *Decker Canyon Road*
  - *Encinal Canyon Road*
  - *Kanan Dume Road*
  - *Latigo Canyon Road*
  - *Corral Canyon Road*
  - *Malibu Canyon Road*
  - *Tuna Canyon Road*
- 6.4 *Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.*
- 6.5 *New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.*

- 6.6** *Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.*
- 6.7** *The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.*
- 6.15** *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 6.18** *For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:*
- Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.*
  - The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.*
  - No portion of any structure shall extend into the view corridor.*
  - Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.*
  - In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.*
- 6.23** *Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.*

In addition, Section 6.5 (B) (5) of the Malibu LIP states:

*New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.*

- a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.*

***b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.***

***c. All windows shall be comprised of non-glare glass.***

Finally, Section 6.5 (D) of the Malibu LIP states:

***6.5 (D) Bluff Development***

- 1. In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on blufftops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure.***
- 2. No permanent structures shall be permitted on a bluff face, except for engineered stairways to accessways to provide public beach access. Such structures shall be designed and constructed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.***
- 3. Landscaping permitted on a bluff face or hillside for restoration, revegetation or erosion control purposes shall consist of native, drought-tolerant plant species endemic to the area.***

The project site is located on a bluff top lot immediately south of Pacific Coast Highway, and overlooking public tidelands just east of Nicholas Canyon Beach in western Malibu. Existing residential development, berming, and landscaping along this portion of Pacific Coast Highway, including the project site, has blocked the view of the ocean in this area. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the ocean and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. In the subject location, Pacific Coast Highway was cut approximately 5 to 14 feet into the existing slope, resulting in berms on either side of the highway. The berm on the subject lot is approximately five to six feet high and obstructs views of the ocean across the subject site.

LCP Policy 6.18 requires that new development on the ocean side of, and fronting, Pacific Coast Highway provide a view corridor equal to 20% of the highway frontage, and, where feasible, be sited and designed so as not to block views of the ocean as seen from Pacific Coast Highway. In this case, however, no ocean views exist from Pacific Coast Highway due to the presence of the berm. Therefore, a view corridor would not be appropriate in this instance.

The proposed development will also be visible from the ocean and from public tidelands located approximately 200 feet south of the project site. The proposed project will be less obtrusive than several beachfront single family residences located immediately below the subject site, and will

be seen in the context of these beachfront residences and other residences on neighboring bluff top lots. However, the proposed project will nonetheless be visible from the beach and the ocean and will therefore have an impact on scenic views (**Exhibit 14**).

Section 6.5 (D) of the Malibu LIP requires new development proposed on bluffs to incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The bluff top setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure. In this case, due to the relative unobtrusiveness of the proposed project, and size constraints of the site, the Commission finds it unnecessary to require a greater setback than the 50 foot minimum setback required to minimize geologic hazards. Therefore, in order to ensure that the proposed project is consistent with the requirements of the Malibu LCP, **Special Condition Twelve (12)** requires the applicant to submit revised plans, for the review and approval of the Executive Director, that eliminate all structural development, with the exception of any proposed decks, patios, and walkways that do not have structural foundations, within 50 feet of the edge of the on site bluff. Any proposed decks, patios, and walkways that do not have structural foundations may be located within 50 feet of the bluff edge, but in no case shall extend closer than 15 feet from the bluff edge.

Section 6.5 (B) (5) of the Malibu LIP requires new development in scenic areas visible from scenic roads or public viewing areas to incorporate colors and exterior materials that are compatible with the surrounding landscape. The proposed project is located in a scenic area and will be visible from public tidelands and the ocean. Therefore, in order to ensure that the proposed project is consistent with the requirements of the Malibu LCP, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, consistent with Section 6.5 (B) (5) of the Malibu LIP, as detailed by **Special Condition Nine (9)**.

In addition, the Commission has found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Policy 6.23 of the Malibu LCP specifically restricts exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area in order to eliminate the adverse individual and cumulative visual impacts associated with the lighting of such areas visible from public areas. In order to mitigate any potential future visual and environmental impacts of the proposed project, and to be consistent with Malibu LCP Policy 6.23, the Commission finds it necessary to require that exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area, as specified in **Special Condition Eleven (11)**.

In addition, future construction on the property has the potential to negatively affect the visual character of the area as seen both from the beach and from Pacific Coast Highway. In order to ensure that no additions or improvements are made to the property without due consideration of the visual impacts, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal permit if additions or improvements to the site are proposed in the future, as detailed in **Special Condition Six (6)**.

Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 6 (Scenic and Visual Resources) of the Malibu LUP, including Section 30251 of the Coastal Act, which is incorporated as part of the LUP, and applicable standards of Chapter 6 (Scenic, Visual, and Hillside Resources) of the Malibu LUP.

## **E. Water Quality**

The Commission recognizes that new development in Malibu and the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

The Malibu LCP incorporates Section 30231 of the Coastal Act, which states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.*

Further, the following LUP water quality policies are applicable:

- 3.100** *New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.*
- 3.102** *Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*
- 3.110** *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be*

*implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*

- 3.111** *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*
- 3.125** *Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.*
- 3.126** *Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.*
- 3.127** *OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.*
- 3.128** *New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.*
- 3.130** *Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.*
- 3.131** *New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTs.*
- 3.132** *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*
- 3.133** *The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.*
- 3.138** *New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate*

*setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.*

- 3.141** *Applications for a coastal development permit for OSTs installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTs on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTs will negatively impact groundwater, nearby surface waters, or slope stability, the OSTs shall not be allowed.*

The project site is a vacant bluff top parcel located between Pacific Coast Highway and the Pacific Ocean. The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on the project site. The reduction in permeable surface area therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased and the peak occurs much sooner after precipitation events. Additionally, grading, excavation and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion.

In addition, pollutants commonly found in runoff associated with new development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a SWMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition Two (2)**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it be applied to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition Two (2)**.

As stated previously, the proposed project includes a swimming pool, spa, and infinity reflecting pool. Malibu LUP policies 3.95 and 3.96 require that new development be sited and designed to protect water quality and not result in the degradation of surface waters, including the ocean, coastal streams or wetlands. There is the potential for pools and spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting sensitive riparian, wetland and marine habitats. Therefore, in order to minimize potential adverse impacts from the proposed pools and spa, the Commission finds it is necessary to require the applicant to submit a pool and spa drainage and maintenance plan, as detailed in **Special Condition Four (4)**.

Finally, the proposed development includes the construction of a new on-site wastewater treatment system (OSTS) to serve the residence. The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OSTs to ensure these systems do not adversely impact coastal waters. The proposed OSTs was previously reviewed and approved in concept by the City of Malibu Environmental Health Department, determining that the system meets the requirements of the plumbing code.

In addition, in order to ensure the OSTs is maintained and monitored in the future to prevent system failures or inadequate system performance, the Malibu LCP includes policies and standards requiring the regular maintenance and monitoring of the OSTs. Therefore, the Commission finds that it is necessary to require the applicant to submit verification that they have obtained a monitoring, operation and maintenance permit from the City, as outlined in **Special Condition Eight (8)**.

Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources.

The Commission finds that based on the above findings the proposed project, as conditioned, will not result in adverse impacts to water quality and is consistent with the applicable policies of the Malibu LCP.

The Commission has found in past permit actions that conformance with the provisions of the plumbing, health, and safety codes is protective of resources and serves to minimize any potential for wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with the applicable policies of Chapter 3 (Marine and Land Resources) of the Malibu LUP, including Section 30231 of the Coastal Act, which is incorporated as part of the LUP, and applicable standards of Chapter 17 (Water Quality Protection) and Chapter 18 (Onsite Wastewater Disposal System Standards) of the Malibu LIP.

## **F. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 841-1732

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: Coastal Commission

Mailing Address: C/O South Central Coast District, 89 South California Street

City: Ventura

Zip Code: 93001

Phone: 805 585-1800

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Construction of a 5,388 sq. ft. single family residence, garage, alternative onsite wastewater treatment system, swimming pool, jacuzzi, gazebo, decks, fencing, and infinity reflecting pool.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

33616 Pacific Coast Highway, City of Malibu, Los Angeles County (Assessor's Parcel Number 4473-021-011)

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<b>TO BE COMPLETED BY COMMISSION:</b>	
APPEAL NO:	A-4-MAL-05-164
DATE FILED:	
DISTRICT:	

Exhibit 2 A-4-MAL-05-164 Appeals (20 pages)
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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: September 26, 2005

7. Local government's file number (if any): CDP 05-041, Appeal 05-005

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Lechuza Villas West, LLC  
C/O Norman Haynie  
Blue Onyx Design and Engineering  
22761 Pacific Coast Highway #260  
Malibu, CA 90265

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Paul Clark  
Protection of Coastal Habitat  
605 Warwick Avenue, # 6  
Thousand Oaks, CA 91360

(2)

(3)

(4)

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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

This project was approved by the Malibu Planning Commission on June 20, 2005. That decision was appealed to the Malibu City Council by Paul Clark of Protection of Coastal Habitat. The City Council denied that appeal and upheld the Planning Commission decision on September 26, 2005. As part of the City Council's denial of the appeal, an additional condition was added to require revised plans such that no portion of the reflecting pool may extend past the edge of the bluff.

The approved project, as conditioned, is not consistent with Malibu LUP policies 4.27 or 4.28, or the provisions of Section 10.4 (D) of the Malibu LIP. These policies and standards require a setback from the bluff edge that is sufficient to provide stability for a projected 100-year economic life of the structure plus an added geologic stability factor of 1.5, and in any case, no less than 100 feet. A reduced setback of no less than 50 feet may be implemented if one of the conditions in Section 10.4(D)(1) or (2) (these two conditions concern the factor of safety present in the bluff slope) can be met with a setback that is less than 100 feet but no less than 50 feet. This setback applies to the primary structure and accessory structures including pool and septic systems. Ancillary structures that do not require structural foundation such as decks, patios, and walkways may be sited no closer than 15 feet from the edge of the bluff.

The project, as approved by the City, includes a residential structure and swimming pool which extend, in part, to less than 50 feet from the edge of the bluff. The project includes an ancillary gazebo that is closer than 15 feet from the edge of the bluff. The septic tank would be located within the 50 foot bluff setback area. Finally, a reflecting pool was approved as part of the project that extends up to the edge of the bluff. There is no discussion in the staff report of the potential erosion rate of the bluff on the project site or what distance would be necessary to provide for the 100-year economic life of the structure. There is no discussion of project alternatives that could be implemented to provide the required setback. There is no discussion regarding whether the project is consistent with LUP policies 4.27 and 4.28.

Rather, the City concluded that the project site does not contain a "coastal bluff", per the Malibu LIP definition. The definition of coastal bluff contained in the Malibu LIP is as follows: "a high bank or bold headland, 10 feet or more in vertical extent, with a broad, precipitous, sometimes rounded cliff face overlooking a body of water". In addition, Section 10.2 of the LIP states that: "All development requiring a Coastal Development Permit, including but not limited to residential structures, commercial buildings, and shoreline protective devices (seawall, revetment, retaining wall, bulkhead, tieback anchor system, or similar structure) on any parcel of land that is located on or along the shoreline, a coastal bluff or bluff-top fronting the shoreline shall be governed by the policies, standards and provisions of this chapter in addition to any other policies or standards contained elsewhere in the certified LCP which

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may apply". The City concluded that because there is a road, structures, and a seawall located landward of the project site, it should not be considered to be "fronting the shoreline" and that the provisions of Chapter 10 should not apply to the approved development.

However, the presence of development between the project site and the shoreline is not determinative of whether the site contains a coastal bluff. The project site contains a geomorphological feature that is a coastal bluff, even though this landform has apparently been altered in the past. The Commission Geologist, Mark Johnsson has reviewed photos and other information concerning the project site and confirms that the project site should be considered to contain a coastal bluff.



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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: \_\_\_\_\_

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Steve Kuer*  
Appellant or Agent

Date: 10/13/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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OCT 13 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Meg Caldwell  
Appellant or Agent

Date: 10/13/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

(Document2)

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OCT 13 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4808  
VOICE (805) 585-1800 FAX (805) 641-1732



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: Protection of Coastal Habitat

Mailing Address: 621 Warwick Avenue Suite #3

City: Thousand Oaks

Zip Code: 91360

Phone: 805-494-1408

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Single family home including pool and decks, garage and septic system.

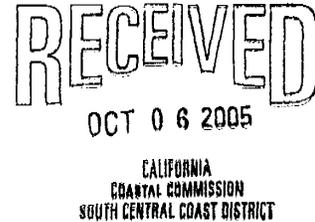
3. Development's location (street address, assessor's parcel no., cross street, etc.):

33616 Pacific Coast Highway, Malibu

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.



**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-4-MAL-05-164

DATE FILED: 10/6/05

DISTRICT: South Central

Exhibit 2

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 09/26/2005

7. Local government's file number (if any): Appeal No. 05-005 (CDP 05-041)

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Norman R. Haynie  
22761 Pacific Coast Highway #260  
Malibu, CA 90265

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Pat Healy

(2) John Mazza

(3)

(4)

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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

On Monday night, September 26, 2005, the City of Malibu reviewed the project at 33616 Pacific Coast Highway on the basis of my appeal from the City Planning Commission. The City Council reviewed the project and approved it for a Coastal Development Permit conditioned on the project being redesigned, moving the pool and decks toward Pacific Coast Highway so they will be located landward of the edge of the bluff.

I believe that the bluff portion of the property may likely be properly defined as a coastal bluff in accordance with the definition provided in Malibu's L.C.P. although the property is not adjacent to the shoreline. The parcel is seaward of Pacific Coast Highway and configured with a seaward facing downhill slope.

Chapter 10 of the L.C.P. provided development standards for properties that are located on a coastal bluff and the design of the project is inconsistent with these standards. For properties, if the property is a "coastal bluff", then the setbacks imposed by the City Council may not be sufficient to prevent environmental impacts. If there are environmental impacts associated with coastal bluffs, they must be mitigated properly. In our opinion, the Coastal Commission should review the entire project for consistency with the City's L.C.P. with respect to coastal bluff protection.

We are therefore respectfully appealing the project to the Coastal Commission.

---

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

Paul Clark  
Signature of Appellant(s) or Authorized Agent  
Pres., Protection of Coastal Habitat  
Date: 10-10-2005

Note: If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

---

Patt Healy  
403 San Vicente Blvd.  
Santa Monica CA 90402  
(310) 393'1818

RECEIVED  
OCT 13 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

October 5, 2005

California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-4508  
Attention Barbara Carey

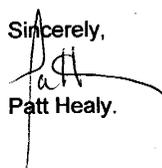
RE CDP 05-041 Malibu 33616 Pacific Coast Highway

Dear Barbara:

Here is an appeal of the Malibu City Council approval of CDP 050-41. As time goes on I may be refining it and will be submitting supplemental information.

If you need any additional information or if the appeal is incomplete, please call me at the above number. With warmest regards.

Sincerely,



Patt Healy.

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 641-1732



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: *Patt Healy + Malibu Coalition for Slow Growth*  
Mailing Address: *403 San Vicente Blvd, Santa Monica CA, 90402*  
City: *Santa Monica CA* Zip Code: *90402* Phone: *310-318-1188*

RECEIVED  
OCT 13 2005

SECTION II. Decision Being Appealed

1. Name of local/port government:

*Malibu City Council*

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

2. Brief description of development being appealed:

*5388 sq ft 2 story residence with 2 car garage  
infinity pool located on a coastal bluff.*

3. Development's location (street address, assessor's parcel no., cross street, etc.):

*33616 Pacific Coast Highway, Malibu  
APN. 4473.021.011*

4. Description of decision being appealed (check one.):

- Approval; no special conditions  
 Approval with special conditions:  
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-MAL-05-164

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

Exhibit 3

Appeal A-4-MAL-05-164

Patt Healy and Coalition for  
Slow Growth Appeal

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision:

September 26, 2005

7. Local government's file number (if any):

CDP-05-041

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Norm Haynie  
Lechuga Village West LLC  
22761 Pacific Coast Hwy  
Malibu CA 90265

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) John Mazza  
6613 Zumeriz Dr.  
Malibu CA 90265

(2) Patt Healy  
Malibu Coalition for Slow Growth  
403 San Vicente Blvd.

(3) Santa Monica CA 90402

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Appeal Reasons.  
The project doesn't meet requirements of 2002 Malibu LCP, including following policies and implementation measures:

1. This is development on a coastal bluff. The city council approved project stating that the required setbacks do not have to be met. Pool is approved at edge of bluff + residence is less than 50 feet from bluff face. applicant can meet required setback.
2. No city analysis as to whether scenic views to and along the ocean have been obstructed by project.
3. No biological assessment done. Staff report indicates oaks on property. No native tree protection plan provided. No native plants identified. No roosting areas assessed.
4. Bluff is a mapped ESHA - Project not sent to ERB as required.
5. City doesn't define coastal bluff correctly.
6. Necessary findings can't be made.
7. If applicant wants to donate a lot on Lechuga Beach (as he <sup>just</sup> suggested at hearing) in exchange for this permit, then Coastal Commission must send this project back to the city and applicant must make a new application to the city's planning dept, since the donation not part of this application or what was considered by City <sup>staff, Planning Commission or City Council.</sup>

more information to follow.

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

*Malibu Coalition for Slow Growth*  
Patricia Haly  
Signature of Appellant(s) or Authorized Agent

Date: 10-7-05

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

To: Members of the Coastal Commission  
From: Patt Healy as an individual and on behalf of Malibu Coalition for Slow Growth  
Re: Commission Appeal A-4-MAL-05-164 33616 Pacific Coast Highway  
Date: October 25, 2005

#### Introduction

This is an appeal of a decision of the Malibu City Council approving development on a coastal bluff top and on the bluff face without the required setback contrary to the requirements of the Malibu LCP.

#### Donation of Beach Lot

At the city council meeting on September 16, 2005 the applicant for the first time suggested that the project be modified to include an additional lot on Sea Level Drive. The City Council rejected the revised project description and considered only the project as presented to the Planning Commission. (See City Council Resolution) The applicant wanted to make a donation of a lot on Sea Level Beach which he represented that he controls in exchange for a CDP for the project as currently designed.

If the applicant makes this offer to the Commission it must be denied since it is not part of the appeal before the Commission. If the applicant desires to incorporate this lot as apart of this project, he must withdraw this application and go back to the city and amend this CDP application.

#### Coastal Bluff

The City of Malibu ignores the definition of a coastal bluff as set forth in the Malibu LCP and has created it own interpretation of a coastal bluff as set forth in the City Local Coastal Program Interpretation No. 9 dated March 28, 2005. (EX 1)

Under this interpretation a coastal bluff exists only if it is or can be subject to wave action. If there is a road or structure in front of the bluff and the ocean the city doesn't consider it a coastal bluff ignoring the clear meaning of the defined term in the Malibu LCP.

Under the LCP a coastal bluff is defined as "a high bank or bold headland, 10 feet or more in vertical extent with a broad precipitous, sometimes rounded cliff face overlooking a body of water." "Overlooking" does not mean that the bluff has to be in the body of water or subject to wave action as the applicant and city contend. The bluff on this property meets the LCP definition. Pictures of the site also confirm this fact. (EX 2) The city engineer also indicated that this project is on a coastal bluff. (EX3)

The applicant asserts that this is not a coastal bluff but rather a man made bluff. Other than asserting this fact with some hand drawn illustrations (the source of which we couldn't identify) there was nothing in the city file to actually prove this assertion.

The applicant has stated that he has old photo's showing this bluff was graded but they have not been produced as part of the record. Even if the applicant's assertion is correct it doesn't mean that this site is no longer a coastal bluff.

Looking at pictures of the bluff face it is clearly a coastal bluff through which a private road was graded. (EX 2) There is nothing in the definition or in the LCP that states that a coastal bluff is no longer a bluff if it has been disturbed. Coastal bluffs are geologic formations. Just because a road was

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graded through the bluff it doesn't negate the fact that it is a coastal bluff.

We ask that the Commission find that this bluff is a coastal bluff.

#### BLUFF TOP DEVELOPMENT

##### A. Required Geologic Setback

The City Council in approving this project ignored LUP section 4.27 and LIP section 10.4D which state that all bluff top development must be set back no less than 100 feet from the bluff top. This requirement may be reduced to 50 feet if the city geologist says it is safe. This requirement shall apply to the principal structure and accessory or ancillary structures such as guest houses, pool, tennis courts and cabana and septic systems.

The proposed main residence, gazebo, swimming pool, septic system, reflecting pool, jacuzzi and decks all appear to be located closer than 50 feet from the bluff top. In fact, the decks and reflecting pool are according to the plans cantilevered and extend over the bluff face. We believe there is a proposed 6 to 10 foot retaining wall on the bluff face (6 ft on plans and up to 10 in geology report) and the beams that support the reflecting pool and decks are to be built on the actual bluff face itself. This is in violation of LUP 4.29 which states that no permanent structures shall be permitted on a bluff face, except for engineered stairways or access ways to provide access to a public beach.

##### B. Bluff is ESHA

Coastal bluffs are designated as ESHA under LUP policy C.1.a 3.i and must be treated as such. On coastal bluff ESHA there is a required minimum of a 100 ft buffer setback under 4.6.1D.

The city never considered this coastal bluff as ESHA as required under LIP4.3. It failed to take into consideration the habitat on the bluff face which is in itself especially valuable because of the role it plays in the ecosystem from a local, regional and statewide basis.

There can be no variance from the 100 foot setback from a coastal bluff top since protection of ESHA takes priority over other development standards LIP 4.6.4.C. If the applicant can't develop outside the 100 foot ESHA buffer the maximum amount of development is limited to the lesser of 10,000 square feet or 25% of the parcel size under LIP4.7.1

In addition, if there is no feasible alternative that can eliminate all impacts to ESHA, then the alternative that results in the least impacts shall be selected, and residual impacts must be mitigated under LIP4.8.

Under 4.8.1 this mitigation includes mitigation for modification of natural habitat for fuel modification. Therefore, the applicant may be required to develop a habitat mitigation plan if he is unable to get approval of a fuel modification plan from the fire department that protects the ESHA Habitat on site.

From the landscaping plan (see below) it appears that this bluff face contains native plants and seems to be a very rich plant and animal habitat.

If there are existing oaks and a sycamore on site as the landscaping plan indicates and the tree trunk diameters are large enough there may need to be a tree protection plan.

The city biologist failed to make findings as to the physical extent of the habitat meeting the

definition of ESHA for their appears to be no review by the city biologist and certainly none by Environmental Review Board (ERB) contrary to LIP 4.3.D. This project never went to the ERB so finding 13.9.D can't be met. Also, Finding 13.9.C can't be met since this project is not the least environmentally sensitive alternative.

### C. Biological Inventory and Landscaping Plan

The plant habitat reports in the file are confusing.

The applicant's undated landscape plan, prepared by The Great Outdoors Landscape and Construction indicates that the dominate existing plant species on the bluff face are the following native plant species in the following proportion Encella Californica (a coastal sage sunflower species) 15%, Rhus Integrifolia (lemonade berry) 70%, Malosma Laurina (Laurel Sumac) 10%.

The applicants biological inventory prepared by Forde Biological Consultants dated 2-25-05 is very vague and is not forthcoming with needed information. In our opinion, it doesn't meet the requirements of what is to be contained in a biological study under LIP4.4.2. In fact, it fails even to specifically identify by name any of the native plant species on bluff face. It rather shows a photograph of the native plant species on the bluff face stating it is outside the development area (which is inaccurate because of the canterlevered structures and retaining wall on the bluff face).

The Biological inventory on page 5 and 6 blithely dismisses all the existing native plant species by stating that they are either not subject to the Tree Protection Ordinance or are within the fuel modification area and therefore do not meet the status of ESHA. This report can hardly be considered as the required biological survey that needs to be submitted with an application for a CDP since it is so deficient.

Bluff faces are very popular habitat for birds and other small animal species. The Biological report doesn't even address the possibility of nesting birds and raptors on site but ridiculously states that birds wouldn't nest in the area because of the cat population in the vicinity. No inventory was ever done of the bird population or the cat population to support this contention. (EX 4)

The residence is not set back the required 100 feet from the bluff face in order to protect the ESHA. It must be required to do so to protect the native habitat species and the birds and animals who rely on this native habitat. Also, LUP 6.27 states that new development shall minimize the removal of natural vegetation.

LUP section 4.46 states that New development within ESHA and habitat buffers shall be sized, sited and designed to minimize impacts of fuel modification and brush clearance on habitat. The applicant should be not only be required to be set back as required from the bluff top but also directed to work with the fire department for ESHA protection that the only clearance required from the bluff face is the dead wood. We don't believe that the fire department would require the removal of bluff face ESHA habitat. If they do, the applicant must provide a mitigation plan for the unavoidable impacts to the ESHA.

In addition, LCP development standards dictate under LIP 3.10 that all new development shall minimize the removal of natural vegetation including native trees and plants in order to minimize erosion and sedimentation, impacts to scenic and visual resources, and impacts to sensitive resources. This is particularly important in this case since this is a fragile coastal bluff that is subject to erosion. LIP 3.10.2A goes on to say that all new development shall be sited and designed to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety.

However the landscaping plan note 5 states that "slope planting measures such as contour planting and terracing and other techniques shall be incorporated on slopes to interrupt the flow and rate of surface runoff to prevent soil erosion." This note was made a condition of approval by the city biologist. (EX5) We believe that this note on the landscaping plan forebodes possible grading on the actual bluff face contrary to the LCP. To date there is no grading plan on file (EX6) so there is no way of knowing the extent and cubic yards of bluff face grading and alteration. The application requires under 13.6.4.D4 the site plan to show major man made and natural landscape features... and modification by the proposed project including building pad and road, driveway areas. This was not done on the bluff face. Any grading or alteration of the bluff face should be clear to the decision maker prior to acting on the project.

It is interesting to note that both the landscaping plan and the fuel modification plan indicate oaks on the site. The biological assessment report mentions one oak on the property while the landscape plan says that there is a sycamore and 6 oaks. The fuel modification mentions that the "portion of the site designated as a significant oak woodland, if any, per Malibu Santa Monica Mountains Land use plan shall be protected. The proposed development should not result in the removal of any habitat or any individual oak trees."

#### VIEW PROTECTION

Whether or not you determine this is a coastal bluff or not this project as designed does not meet the view protection policies of the LCP.

Walking this particular beach at low tide is part of a very popular walk along the shoreline by the public between the public beaches east of the site (Zuma, Lechuza, the 3 state owned pocket beaches) and Nicholas and Leo Carillo public beaches west of the site.

The proposed canterlevering over the bluff face, the residence and gazebo do not meet the setback requirement of development standard 6.5D1 i.e. no less than 50 feet to avoid and minimize visual impacts to the beach below.

In addition, both the applicant and the city failed to perform the required analysis from the shoreline at low tide to determine whether the canterlevered reflecting pond, pool and decks did protect public views from the beach (LIP6.7). Before the city council the applicant provided photo's indicating that allegedly only a small portion of the main residence was visible from the shoreline. However, no mention was ever made of the visual impact of the proposed gazebo near the edge of the bluff top, the retaining wall and beams built into the bluff face and the canterlevered reflecting pond and decks extending over the bluff top and face will have on the public views.

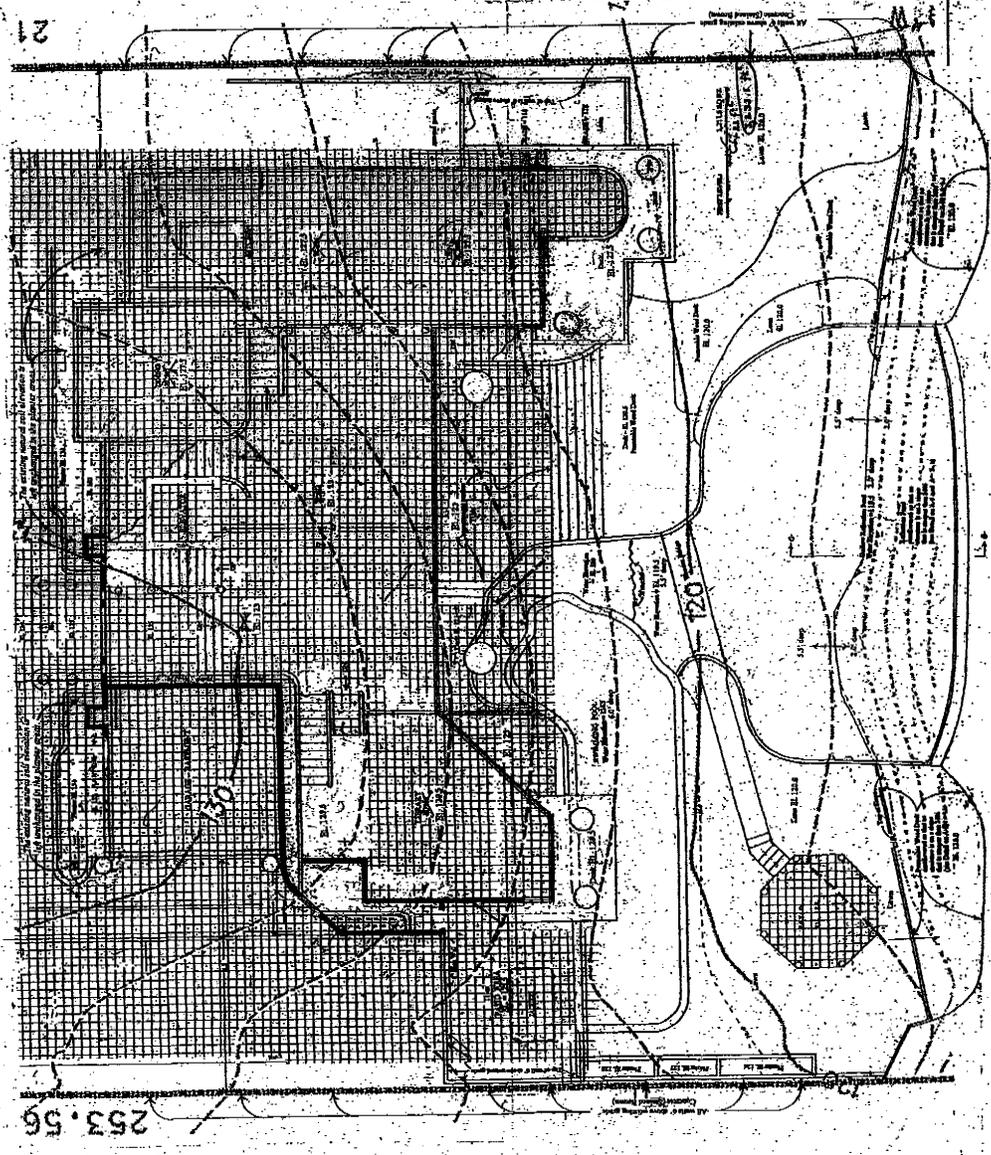
There were no visual indicators such as story poles to determine whether any of the visual impacts mentioned above (other than residence) were put in place as required by 6.3. Hence the required findings pursuant to 6.4 cannot be made.

In driving by the property traveling westbound along PCH it appears that possibly ocean views are visible through the site. This should be further analyzed.

#### Conclusion

Please deny this project as proposed for it fails to conform to the Malibu LCP for the reasons stated above.





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253.56

Exhibit 4  
 A-4-MAL-05-164  
 First Level / Landscape Plan



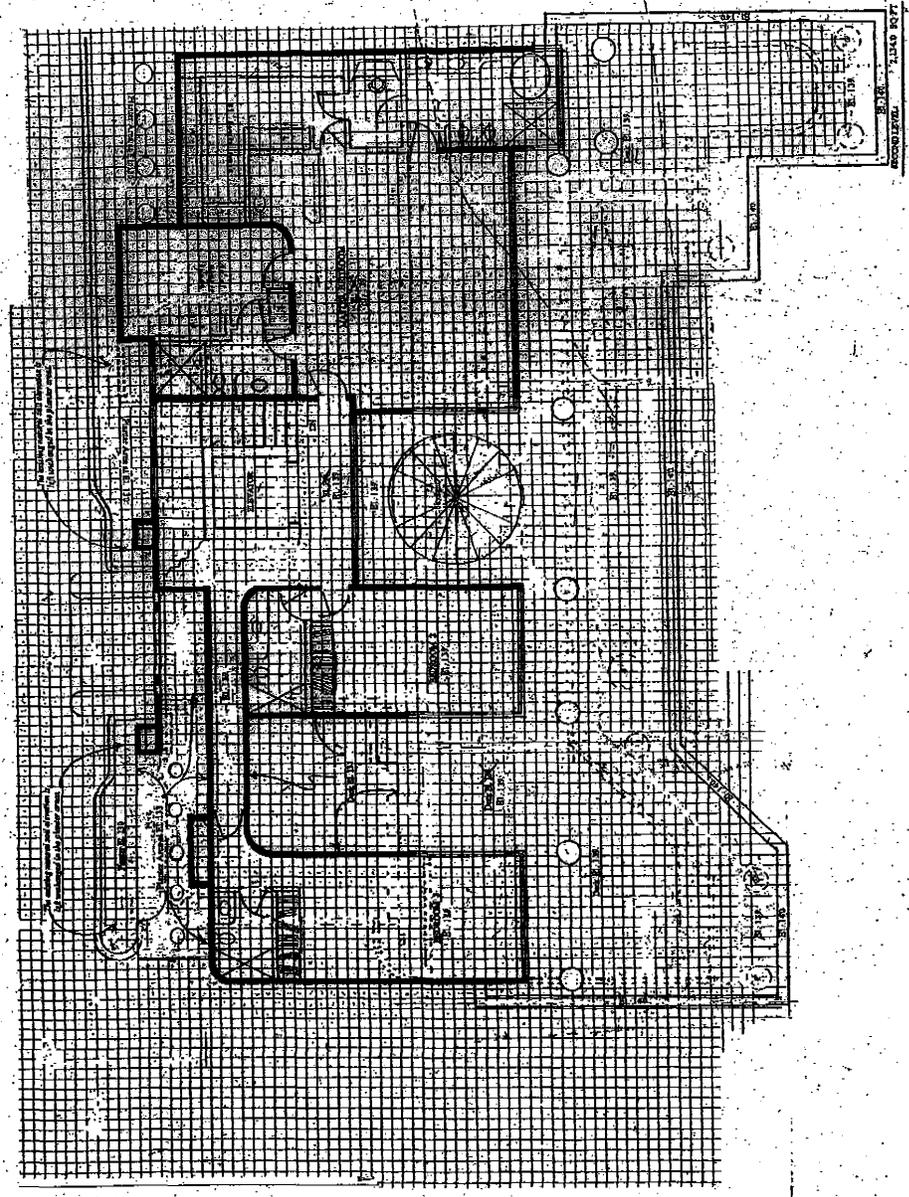


Exhibit 6  
 A-4-MAL-05-164  
 Second Level Plan

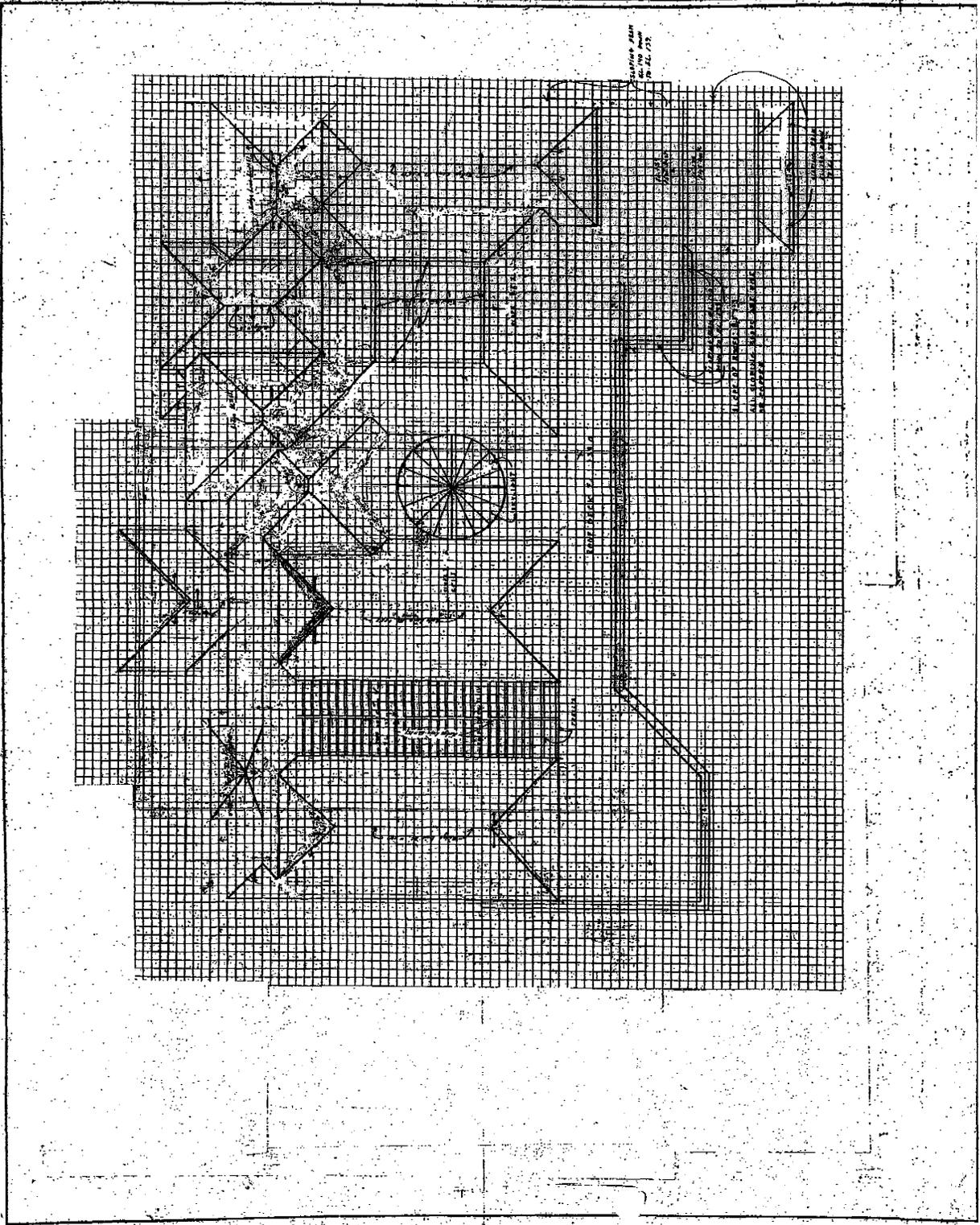
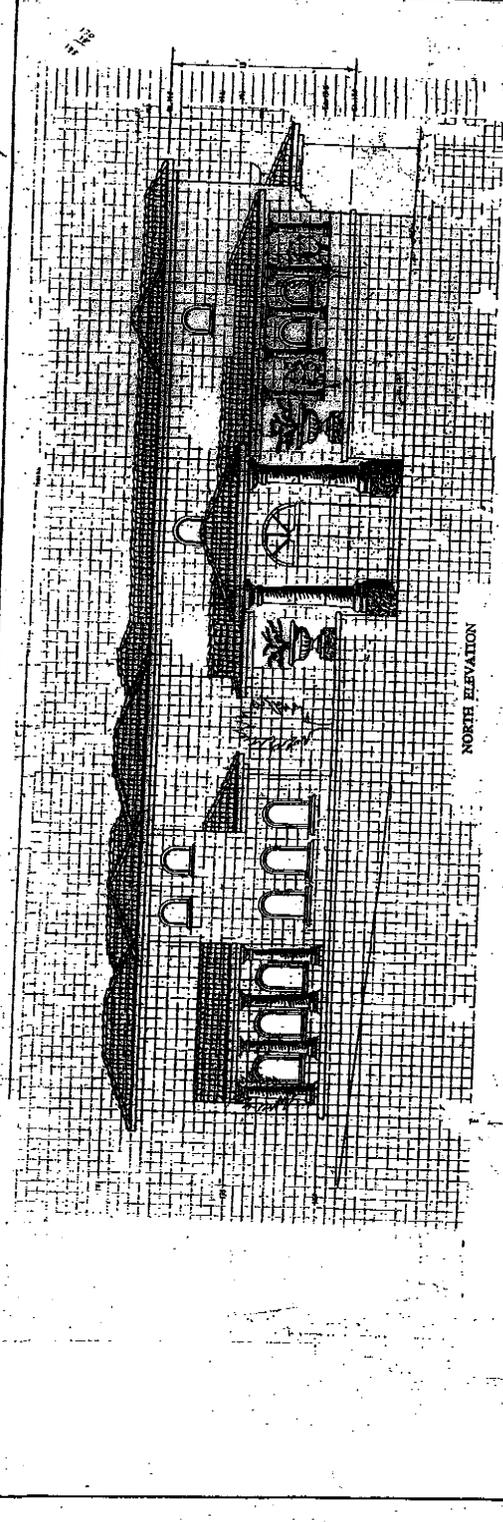
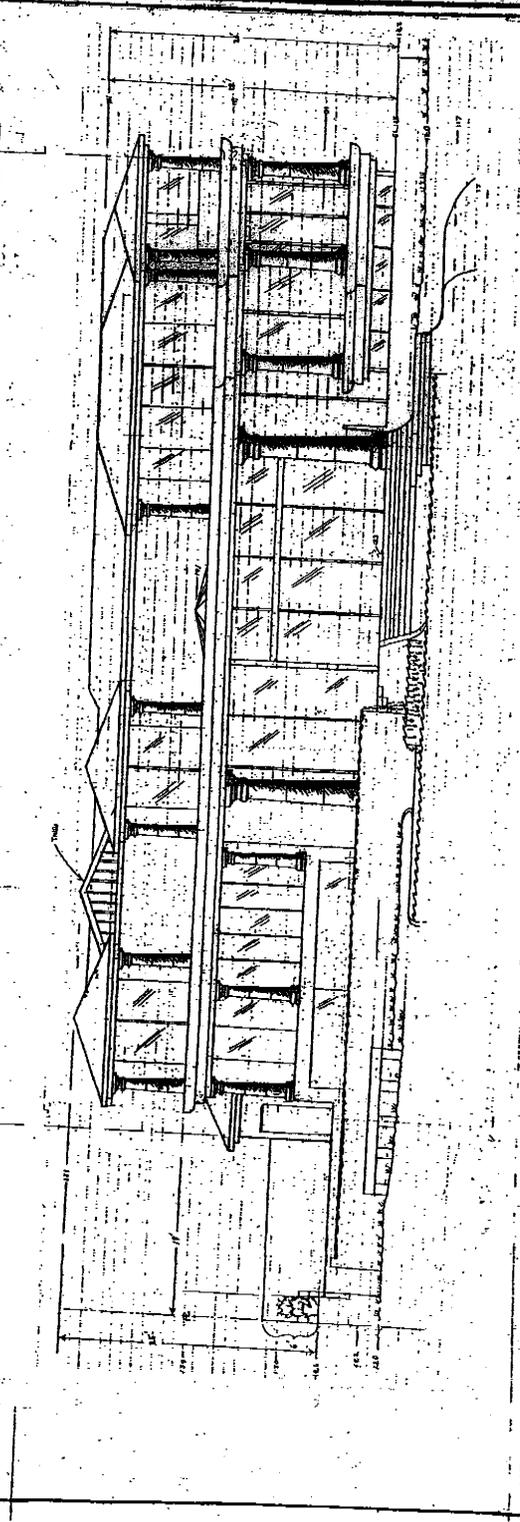


Exhibit 7  
 A-4-MAL-05-164  
 Roof Plan



NORTH ELEVATION



SOUTH ELEVATION

Exhibit 8  
 A-4-MAL-05-164  
 North and South Elevations

STAR SAPPHIRE  
DESIGNERS  
12751 PACIFIC CREEK BLVD. SUITE 100  
MILBURN, CALIFORNIA, 94588

APPLICANT: MALDEN CENTER & ASSOCIATES, INC.  
462221 Pacific Coast Highway, Malibu  
Tel: 424-420-4242  
Fax: 424-420-4242  
Architect: MALDEN CENTER & ASSOCIATES, INC.

EAST ELEVATION  
&  
WEST ELEVATION

DATE	SCALE	DRAWN	CHECKED	REVISION
	1/8" = 1'-0"			

SHEET  
A-7

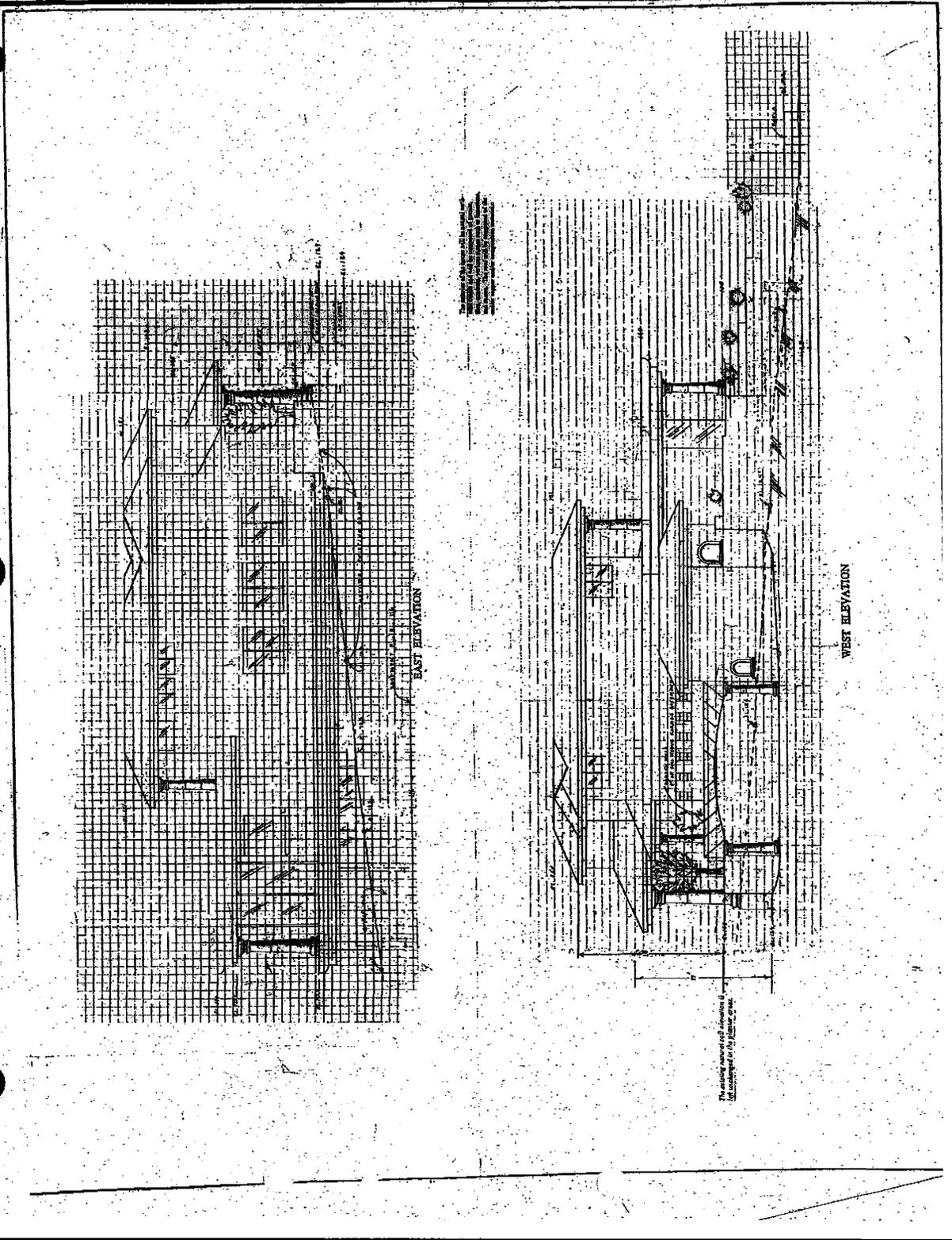


Exhibit 9  
A-4-MAL-05-164  
East and West Elevations



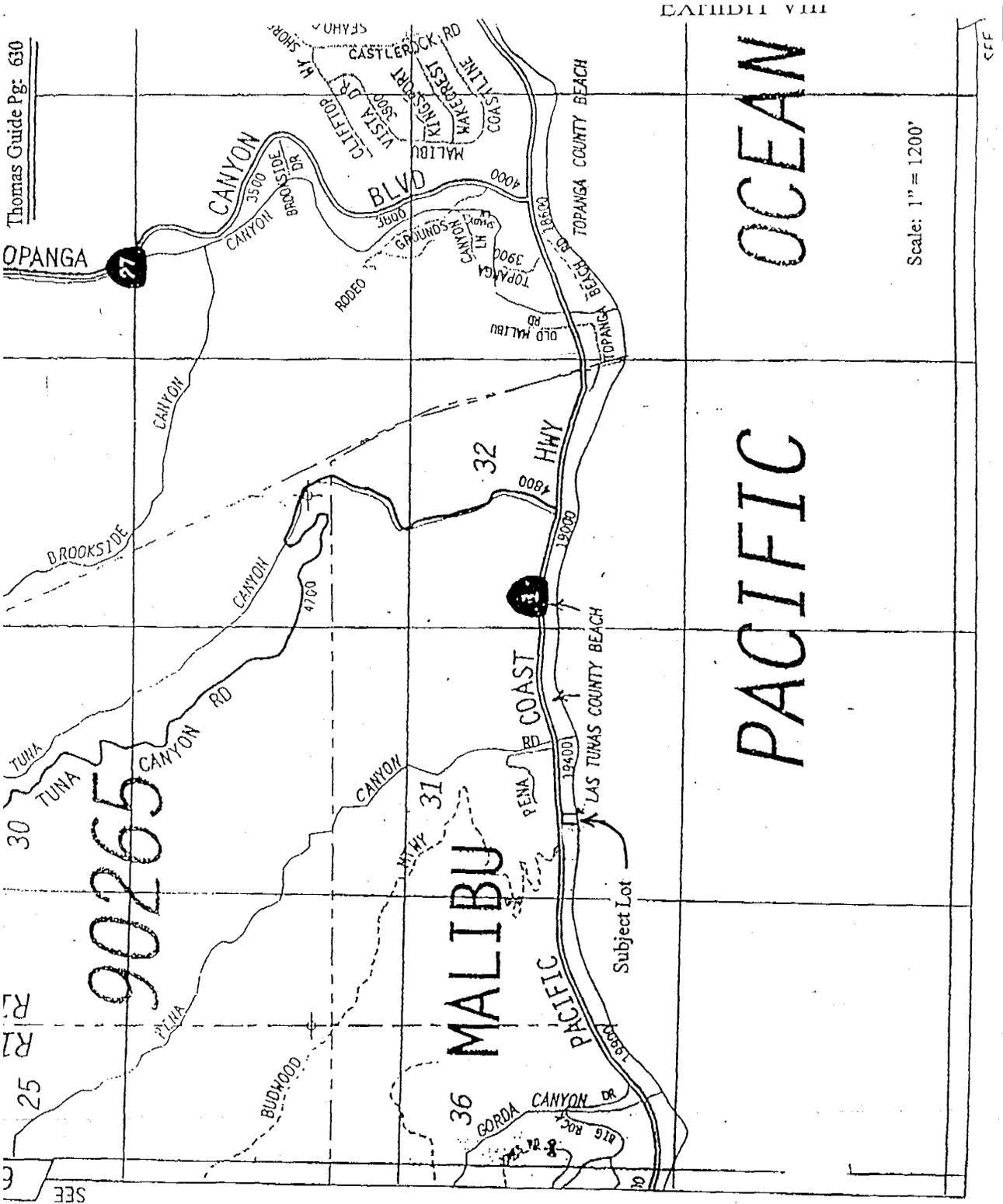


Exhibit 11  
 A-4-MAL-05-164  
 Vicinity Map, 1957 Pacific Coast Highway

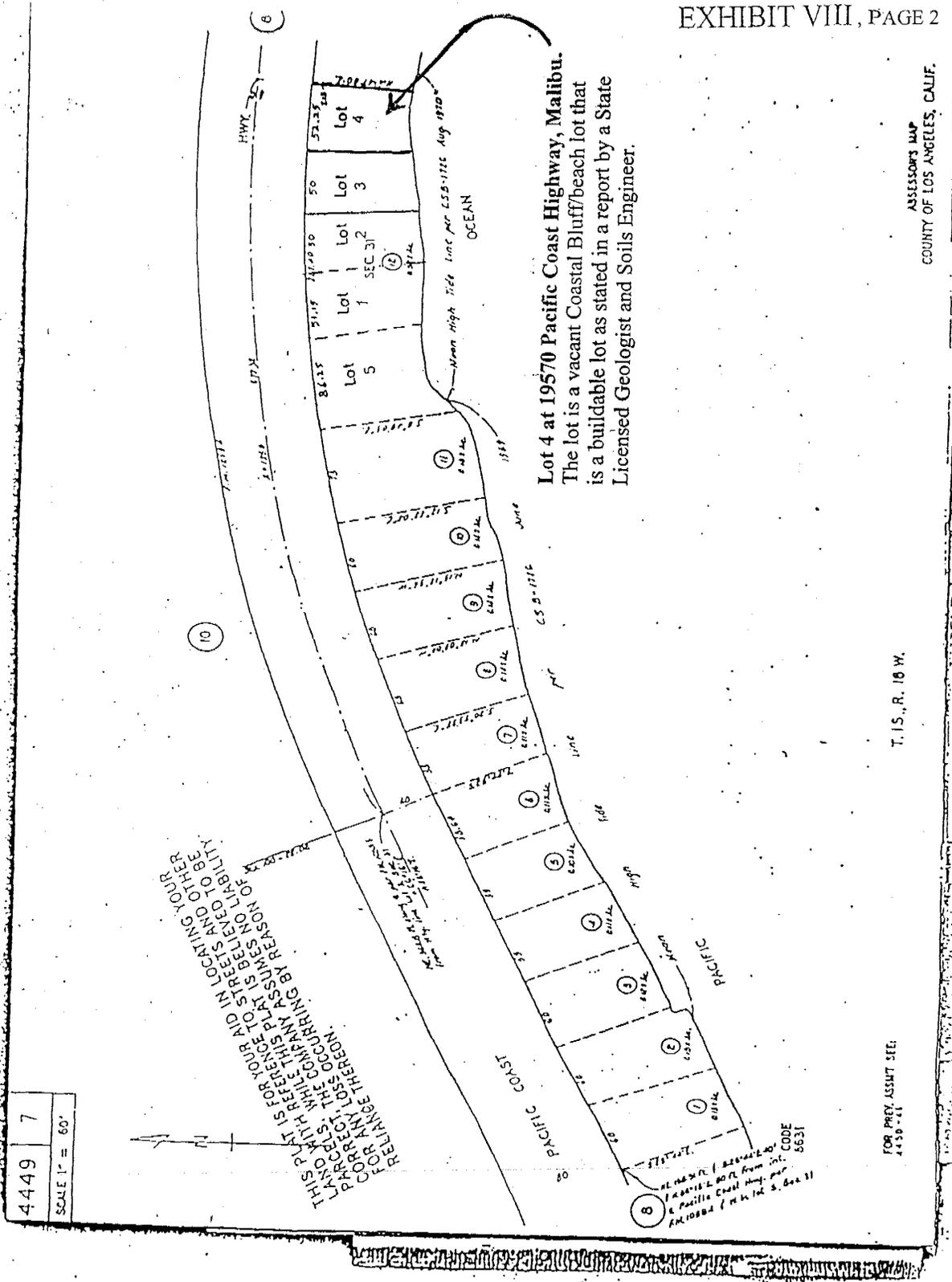


Exhibit 12  
A-4-MAL-05-164  
Parcel Map, 19570 Pacific Coast Highway



Exhibit 13  
A-4-MAL-05-164  
Aerial View



**SITE**



**SITE**